

RENDERED: April 15, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000646-ME

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
ACTION NO. 03-CI-010950

HONORABLE DONALD ARMSTRONG, JUDGE,
JEFFERSON DISTRICT COURT; AND
ENIS SMAJLOVIC

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, KNOPF, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Commonwealth of Kentucky brings this appeal from a February 9, 2004, Opinion and Order of the Jefferson Circuit Court that denied the Commonwealth's petition for a writ of prohibition against the Honorable Donald Armstrong, Jefferson District Court Judge. Ky. R. Civ. P. 81. We affirm.

On December 15, 2003, the Commonwealth filed writ of prohibition in the Jefferson Circuit Court seeking to prohibit

Judge Armstrong "from requiring the Commonwealth to try the impending criminal action solely in front of a sitting criminal court judge, and furthermore prohibiting the order of suppression of the breath test results." In this case, the dispute surrounds the suppression of breathalyzer test results performed on Enis Smajlovic and Judge Armstrong's granting Smajlovic a bench trial. The circuit court ultimately denied the writ, thus precipitating this appeal.

The Commonwealth brings several contentions of error for review in this appeal. We are, however, unable to reach the merits of these contentions. We have scoured the record and were unable to locate Judge Armstrong's order suppressing any breathalyzer results or the order granting a bench trial. In fact, the appellate record simply consists of the circuit court's original record and does not contain any part of the record from the district court.

It is well-established that the burden is on appellant to ensure this Court is supplied with a sufficient record to decide the appeal. See Fanelli v. Commonwealth, 423 S.W.2d 255 (Ky. 1968). As we are supplied with neither the district court's record nor the district court's orders, we are compelled

to summarily affirm the circuit court's denial of the Commonwealth's writ of prohibition.¹

For the foregoing reasons, the Opinion and Order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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BRIEF FOR APPELLEE ENIS
SMAJLOVIC:

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¹ The real party in interest, Enis Smajlovic, urges this Court to award his attorney fees and costs under Ky. R. Civ. P. 73.02(4). As we are unable to conclude that the appeal was taken in "bad faith," we decline to do so.